XI-HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(28)

मामला क्रमांक Cr.A.O 524/02 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

HIGH COURT OF CHHATTISGARH AT BILASPUR

DIVISION BENCH:

HON'BLE MR. L.C. BHADOO &
HON'BLE MR. DHIRENDRA MISHRA, JJ

CRIMINAL APPEAL NO.524/2002

APPELLANTS

1. Nehrulal son of Sukdeo, aged 42 years.
2. Navdharam, son of Sukdeo, aged 35 years.
3. Rooplal, son of Nehrulal, aged 21 years.
4. Sukdeo, son of Mohan, aged 60 years.

All Binjhwar by caste, cultivators and residents of Village Bade Khairwar P.S. Sarangarh, Distt. Raigarh (C.G.)

VS

RESPONDENT

State of Chhattisgarh, through P.S. Sarangarh, District Raigarh (C.G.).

Present:
Miss Nirupama Bajpai, Advocate for the appellants.
Mr. Ashish Shukla, Additional Public Prosecutor with Mr. Akhil Mishra, Panel Lawyer for the respondent-State.

ORAL JUDGMENT

(8th May, 2007)

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —2—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Per L.C. Bhadoo, J:

This appeal is directed against the judgment of conviction and order of sentence dated 6th September, 2001 passed by learned 2nd Additional Sessions Judge, Raigarh in S.T. No.155/2000 whereby learned Additional Sessions Judge after holding the accused/appellants guilty for commission of offence under Section 302/34 of the IPC, for committing murder of Trilochan, sentenced each of the accused/appellant to undergo R.I. for life.

Case of the prosecution, in brief, is that on 29.5.2000 at about 14.45 hrs Kushto Ram (PW-6) gave merg intimation (Ex.P-8) in the Police Station Sarangarh to the effect that his brother Trilochan in the morning at about 9.00 a.m., after informing that he is going to take bath, went towards Goghra drain. One & Half hour thereafter at about 10.30 a.m. when he was going towards Goghra drain taking the cattle, he saw the body of his brother Trilochan on a Peepal tree and Nehru, Novdha, Sukdeo & Rooplal were standing below Peepal tree, who after seeing him started running away. When he reached near the tree and saw body of his brother, he saw that there was a black mark on the right side of neck of his brother. He informed that those four persons have committed murder of his

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आदेश पत्रक (पूर्वानुबद्ध)

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brother by pressing his neck. Receiving this information, the S.H.O., Police Station Sarangarh registered the First Information Report (Ex.P-9), left for the scene of occurrence and after giving notice (Ex.P-1) to the Panchas prepared the inquest (Ex.P-2) on the body of Trilochan. One brass tumbler, one white towel & one lungi were seized under Ex.P-3 from the place of occurrence. Site plan (Ex.P-3A) was prepared by the Patwari (PW-4). Accused Sukdeo while in the police custody gave memorandum (Ex.P-4) regarding the place where he has kept the weapon of offence i.e. rope and club, which were used for strangulation of Trilochan and in pursuance of that one plastic rope was seized under Ex.P-5. Navdha gave memorandum (Ex.P-6) regarding the place where he kept the club and in pursuance of that club was recovered under Ex.P-7. Body of Trilochan was sent for postmortem examination to Primary Health Centre, Sarangarh where Dr. R.P. Patel (PW-13) conducted the postmortem, prepared the postmortem report Ex.P-11 and opined that the cause of death is asphyxia due to throttling and death is homicidal in nature. Site Plan (Ex.P-13) was prepared by the Investigating Officer.

After completion of investigation, charge sheet was filed in the Court of Judicial Magistrate 1st Class, Sarangarh, who in turn committed the case to learned Sessions Judge, Raigarh from where

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आदेश पत्रक (पूर्वानुबद्ध)

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learned Additional Sessions Judge received the case on transfer for trial. The prosecution in order to establish the charge against the accused/appellants examined sixteen witnesses. Statements of accused/appellants were recorded under Section 313 of Cr.P.C. in which they denied the material appearing against them in the prosecution evidence and stated that they are innocent and have been falsely implicated in the crime. Accused/appellants examined Yaad Ram Patel (DW-1) as their defence witness.

Learned Additional Sessions Judge after hearing the arguments of learned counsel for the respective parties, convicted and sentenced the accused/appellants, as aforementioned.

We have heard Miss Nirupama Bajpai, Advocate for the appellants and Mr. Ashish Shukla, Additional Public Prosecutor with Mr. Akhil Mishra, P.L. for the respondent/State.

Miss Bajpai has not disputed the homicidal death of Trilochan. Moreover, Dr. R.P. Patel (PW-13) has stated that on 30.5.2000 he conducted postmortem on the body of Trilochan and found that there was a ligature mark on the right side of neck in the size of 2"x1" brown in colour, another ligature mark on the left side of neck in the size of $2\frac{1}{2}$" x 0.8", on dissection under the place of ligature

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आदेश पत्रक (पूर्वानुबद्ध)

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mark it was found that the tissues were ruptured and blood clots were visible. Injuries were ante mortem in nature and were within 30 hrs and the death was homicidal on account of asphyxia. His report is Ex.P-11.

Therefore, in view of the above medical evidence, it is established that the death of Trilochand was homicidal in nature.

As far as the involvement of accused/appellants in the crime in question is concerned, there is no direct or ocular evidence in this case and the whole case rests upon the circumstantial evidence. In order to rest conviction based on the circumstantial evidence, as per decision of the Hon'ble Apex Court in the matter of **Dhananjoy Chatterjee Vs. State of W.B.** reported in **(1994) 2 SCC 220,** the circumstantial evidence must satisfy the following tests:

a. the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;
b. those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;
c. the circumstances, taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and

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आदेश पत्रक (पूर्वानुबद्ध)

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d. the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

The prosecution has tried to establish the charge against the accused/appellants based on the following circumstances;

I. That, there was a quarrel between the deceased Trilochan & accused Nehru two years before the date of incident i.e. 29.5.2000.

II. That, the accused persons were seen pulling the body of deceased on the tree.

III. That, the rope & club were recovered at the instance of accused Sukdeo & Navdha.

IV. That, after seeing the brother of deceased coming near the tree, the accused persons ran away.

1st Circumstance;

So far as this circumstance is concerned, the prosecution has tried to establish the motive behind the crime on the basis of the fact that two years before the date of incident the deceased quarreled with Nehru and even pulled the hairs of wife of Nehru and therefore, the accused persons had committed murder of Trilochan on account of old animosity. In order to establish this circumstance

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the prosecution has examined PW-1 Nanku Ram & PW-6 Kushto Ram, brother of deceased. Nanku Ram (PW-1) has stated that four years prior to the date of his examination i.e. 3.1.2001 he went to Allahabad, from where he returned and brought Ganges water, he was talking with Govind Ram that Ganges water is to be offered at Puri temple, in the meantime, Nehru came there and asked Govind Ram that why he is backbiting against him, on which Govind Ram said that your uncle is present here you may enquire from him whether I was backbiting against you or not, on which, Nehru and Govind started quarreling. In the meantime, Trilochan came on the scene and Nehru assaulted Trilochan with the bottle on his head. Meanwhile, wife of Nehru reached there, she said to her husband that let us go we will not quarrel and thereafter, Trilochan pulled the hairs of Nehru. The matter was settled by Sarpanch Parmanand. In the cross-examination this witness has stated that incident took place four years back, whereas, PW-6 Kushto Ram, brother of deceased has stated that two years' prior to the date of his examination i.e. 20.6.2001, on the day of Puspuni festival Nehru & Trilochan quarreled on which Nanku intervened and in the meantime, wife of Nehru came and Trilochan pulled her hairs, as a result of

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which Nehru became angry and he attacked Trilochan on his head with a bottle. The matter was not reported in the police station.

If we scrutinize the evidence of above two witnesses, in the first instance, there is major contradictions between the evidence of two because PW-1 Nanku Ram has stated that the quarrel between Nehru & Trilochan took place four years prior to date of his evidence i.e. 3.1.2001, whereas PW-6 Kushto Ram has stated that the quarrel took place six months prior to his evidence dated 20.6.2001. Moreover, it has come in the evidence of Nehru Ram (PW-1) that Parmanand, Sarpanch had settled the matter and he advised them not to quarrel and even the matter was not reported to the police. When the matter was compromised and that was not such a serious matter which can be a ground for committing the murder of Trilochan and that too after such a long period, we are of the considered opinion that the prosecution has failed to establish that the accused persons were having a strong motive to commit the crime in question.

2nd Circumstance:

So far as this circumstance is concerned, Khikram (PW-8) has stated that a year's back from the date of his evidence i.e. 20.6.2001 Trilochan died. He has further stated that when he was

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going towards Goghra drain to bring the branches of blueberry, he saw that accused Sukdeo, Nehru, Navdha & Rooplal were pulling the body of a person on the Peepal tree. Accused Navdha & Nehru were sitting on the Peepal tree, whereas, Sukdeo & Roopal were standing on the ground. They were pulling the body by tying with the rope. At that time he was not able to identify the body. He has further stated that he did not disclose this fact to anyone in the village. The evidence of this witness does not inspire confidence, for the reason that when four persons were pulling the body of a person on the Peepal tree, then why he has not disclosed this fact to anyone and particularly when he has stated that he was having good relations with Trilochan, then how he was not able to identify the body. Therefore, for the above two reasons the evidence of this witness does not inspire confidence.

PW-9 Sher Singh has stated that in the month of May, 2000 Trilochan died. One day, he was going from Parsadih to Nawadih, when he reached near Goghra drain he saw that accused Sukdeo, Nehru, Navdha & Rooplal were pressing the neck of Trilochan with the help of club and Trilochan was writhing. Being frightened, he ran away. In the cross-examination he has stated that the police recorded his statement on 30.6.2000 and then he stated that his

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evidence was recorded on 30.1.2000. He has further stated that he had good relations with Kushtoram (PW-6) and today Kustoram has also come to give evidence. But the fact remains that this witness has not stated to anyone that he saw the accused persons pressing the neck of Trilochan with the help of club and therefore, evidence of this witness also does not inspire confidence.

PW-6 Kushto Ram, brother of deceased, has stated that on 29.5.2000 he was ploughing the field, at about 9.00 a.m. his brother Trilochan went towards drain carrying tumbler in his hand. Thereafter, at about 10.30 p.m. he also went towards drain, he saw from 20 paces that accused Sukdeo, Nehru, Navdha & Rooplal, all four were on the branch of Peepal tree and after seeing him they started running away. After their running away, he went near the dead body and found that the same is of his brother Trilochan, which was in a sitting position on a branch of peepal tree. He also saw that there was a ligature mark on the neck of his brother. However, in merg intimation (Ex.P-8) given by this witness on the same day at about 14.45 hrs it has been mentioned that he saw the accused persons below the Peepal tree and after seeing him they started running away. As such, there is material contradiction in the evidence and merg intimation given by this witness because in merg intimation

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(Ex.P-8) he has stated that accused persons were standing on the ground and after seeing him they started running away, whereas, in his court evidence he has stated that the accused persons were on the branch of peepal tree and after seeing him they started running away. Therefore, in view of the above material contradictions it is difficult to believe that in fact Kushto Ram (PW-6) saw the accused persons near the place of occurrence.

3rd Circumstance:-

So far as the recovery of rope and club at the instance of accused Sukdeo & Navdha is concerned, such club and rope are commonly found in every house of village. The prosecution has not adduced any specific circumstance or evidence which goes to show that these articles were used for the purpose of pulling of the body of deceased on the branch of Peepal tree or that the club was used for pressing the neck of the deceased Trilochan. Therefore, based on the recovery of these articles i.e. rope and club, the accused persons cannot be connected with the crime in question.

4th Circumstance:-

So far as this circumstance is concerned, the evidence of Keshto Ram (PW-6) has already been discussed earlier and in which

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we have found that the prosecution has not been able to establish the fact that in fact, Kushto Ram (PW-6) saw the accused persons running away from the place of occurrence i.e. Peepal tree.

For the foregoing reasons, there is no cogent, legal clinching evidence on record whereby the accused persons can be connected with the murder of Trilochan and as such, the conviction of the appellants under Section 302/34 of IPC cannot be sustained.

In the result, the appeal succeeds, conviction & sentence imposed upon the accused/appellants for commission of offence under Section 302/34 of the IPC are hereby set aside and they are acquitted of the above offence. It has been said that the appellants are in detention since 30.5.2000, therefore, they be set at liberty forthwith, if not required in any other case.

Sd/-
L.C.BHADOO
Judge

Sd/-
DHIRENDRA MISHRA
Judge

Roshan/-